

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOCKHEED MARTIN TRANSPORTATION
SECURITY SOLUTIONS, AN OPERATING UNIT OF
LOCKHEED MARTIN CORPORATION,

Plaintiff,

-against-

MTA CAPITAL CONSTRUCTION COMPANY and
METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.

No. 09 cv 4077 (PGG)(GWG)

ECF CASE

**NOTICE OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT BY PLAINTIFF**

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TRAVELERS CASUALTY AND SURETY COMPANY
OF AMERICA, FEDERAL INSURANCE COMPANY,
and SAFECO INSURANCE COMPANY OF AMERICA,

Plaintiff,

-against-

METROPOLITAN TRANSPORTATION AUTHORITY,
MTA CAPITAL CONSTRUCTION COMPANY, and
NEW YORK CITY TRANSIT AUTHORITY,

Defendants.

No. 09 cv 6033 (PGG)(GWG)

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PLEASE TAKE NOTICE that, upon the annexed declaration of Matthew A. Taylor,
dated July 15, 2013, the Statement Pursuant to Local Civil Rule 56.1, dated July 15, 2013, the
exhibits annexed to Plaintiff Lockheed Martin Transportation Security Solutions An Operating
Unit of Lockheed Martin Corporation's, ("Lockheed Martin") Appendix to the Rule 56.1
Statement, and the Joint Appendix of all parties, and all other pleadings and proceedings had
herein, Lockheed Martin by their attorneys, will move this Court before the Hon. Paul G.
Gardephe, Judge of the United States District Court for the Southern District of New York, 40
Foley Square, New York, NY, at a date and time to be determined by the Court, for an order,
pursuant to Federal Rule of Civil Procedure 56 (a), granting partial summary judgment in its
favor, on the following factually and legally unsupported issues underlying Defendants' MTA

Capital Construction Company and Metropolitan Transportation Authority (collectively "MTA") wrongful termination of Lockheed Martin:

1. The contract did not require Lockheed Martin to develop software and the contract prohibited Lockheed Martin from either modifying the Commercial Off The Shelf software or developing custom software unless there was a written modification to the contract in the form of a directive and written approval which was not given;
2. The Test Evaluation Master Plan ("TEMP"), which is material to the issues in this case, was approved by MTA and governed all testing of the IESS System; and
3. MTA agreed that Lockheed Martin could move equipment into the field without fixing all variances from the FAT testing phase;
4. MTA waived its right to terminate the contract and elected the remedy of damages for purported breaches that occurred months, if not years, prior to termination when MTA allowed Lockheed Martin to continue its performance;
5. MTA wrongfully terminated Lockheed Martin for purported delay because after the original Substantial Completion of August 29, 2008, MTA permitted Lockheed Martin to continue work, but failed to reinstate time is of the essence as an essential term of the agreement and establish a reasonable completion date; and
6. MTA agreed that certain requirements issues, called "showstoppers" because MTA viewed them as crucial functionality, were resolved or closed prior to termination and therefore, cannot be relied on as a basis for termination.

PLEASE TAKE FURTHER NOTICE that, pursuant to the scheduling order in this case, answering papers, if any, shall be served and filed on or before August 23, 2013.

PLEASE TAKE FURTHER NOTICE that, pursuant to the scheduling order, reply papers, if any, shall be served and filed on or before September 12, 2013.

Dated: New York, NY
July 15, 2013

DUANE MORRIS LLP

By: /s/ Matthew A. Taylor
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